



FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

MDD/143867

PRELIMINARY RECITALS

Pursuant to a petition filed August 29, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code §HA 3.03(1), to review a decision by the Disability Determination Bureau in regard to Medical Assistance, a hearing was held on October 10, 2012, at Port Washington, Wisconsin.

The issue for determination is whether the Division of Hearings and Appeals has jurisdiction to address the merits of Petitioner's request for Medicaid benefits.

The record was held open for Petitioner to submit the results of an MRI done on October 9, 2012. The study result has been marked as Exhibit 2 and entered into the record.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Disability Determination Bureau via File

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Ozaukee County.

2. On May 29, 2012, Petitioner applied for Medicaid, asserting a claim that she has been rendered disabled by multiple sclerosis. (DDB file)
3. On May 30, 2012, Petitioner also applied for Social Security Disability Income (SSDI) through the Social Security Administration (SSA), claiming disability due to multiple sclerosis. (DDB file)
4. On July 24, 2012, the SSA denied Petitioner's application for SSDI and on August 1, 2012, the DDB denied Petitioner's application for Medicaid. (DDB file)
5. Petitioner filed requests for reconsideration of both decisions. (DDB file)
6. On September 12, 2012, the SSA sustained its denial of Petitioner's application for SSA. The DDB subsequently, denied Petitioner's application for Medicaid and forwarded her file to the Division of Hearings and Appeals for Review.

DISCUSSION

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. State v. Hanson, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). In a case involving an application for assistance, the applicant has the initial burden to establish he or she met the application requirements.

A person between ages 18 and 65, with no minor children, must be blind or disabled to be eligible for MA. A finding of disability must be in accordance with Federal Social Security/SSI standards. *See Wis. Stats. §49.47(4)(a)4*. Because the standards are the same, a finding of no disability for Social Security/SSI purposes made within 12 months of the Medicaid application is binding on a State Medicaid agency. Exceptions may occur only if certain conditions exist. Specifically, the Division of Hearings and Appeals has no authority to find a Petitioner disabled unless he or she:

- (i) Allege[s] a disabling condition different from, or in addition to, that considered by SSA in making its determination; or
- (ii) [The MA application is more than 12 months after the most recent SSA determination]; or
- (iii) Alleges less than twelve months after the most recent SSA determination denying disability that his or her condition has changed or deteriorated since that SSA determination, alleges a new period of disability which meets the original durational requirements of the Act, and
 - (A) Has applied to SSA for reconsideration or reopening of its disability decision and SSA refused to consider the new allegations.

42 CFR 435.541(c)(4)(emphasis added).

Here, Petitioner concurrently applied for SSDI and Medicaid alleging the same disabling conditions. The SSA denied Petitioner's request for benefits within 12 months of her application for Medicaid.

Petitioner's asserts that her condition has worsened since she was denied SSDI on September 12, 2012 and bases this conclusion upon an MRI done on October 9, 2012 and an alleged diagnosis of Progressive Multifocal Leukoencephalopathy (PML), which is a disease of the brain caused by a viral infections associated with the use of natalizumab (Tysabri) in some patients with multiple sclerosis. (See www.wikipedia.com and www.tysabri.com) Petitioner's claim of a change or deterioration in her condition cannot be sustained.

First, there is no evidence supporting Petitioner's claim that she was diagnosed with PML. Petitioner has submitted no medical documentation showing this diagnosis and based upon the medical records in the DDB file, it does not appear that Petitioner has been prescribed Tysabri. Indeed, she did not list it as a medication on either her initial application for Medicaid, or her request for reconsideration. Second, the MRI study did not note any significant changes in Petitioner's condition. Thus, there is insufficient evidence upon which to find that Petitioner's condition has changed/deteriorated since she was denied SSDI on September 12, 2012. Consequently, the SSA's decision is binding and the Division of Hearings and Appeals does not have the authority to address the merits of Petitioner's application for disability-based Medicaid benefits.

If Petitioner has, indeed, developed PML and if it has significantly impaired her cognitive function, she can file a NEW application for medical assistance, based upon this condition.

CONCLUSIONS OF LAW

That the Division of Hearings and Appeals does not have the authority to address the merits of Petitioner's application for disability-based Medicaid benefits where there is a Social Security Administration denial of disability within 12 months of the Medicaid application.

THEREFORE, it is

ORDERED

The petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

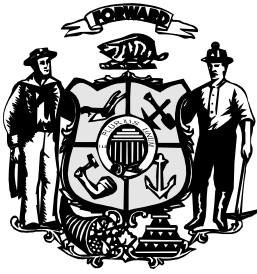
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of
Milwaukee, Wisconsin, this 1st day of
November, 2012.

Mayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

David H. Schwarz
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on November 1, 2012.

Ozaukee County Department of Social Services
Disability Determination Bureau